

Nuclear Regulatory Commission

§ 10.2

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

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AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10450, 3 CFR parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR table 4.

SOURCE: 47 FR 38676, Sept. 2, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 10.1 Purpose.

This part establishes the criteria, procedures, and methods for resolving questions concerning: (a) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and licensees of the NRC, individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Executive Director for Operations of the NRC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information; and (b) the eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance. This part is published to implement such Statutes and Executive Orders 10865, 25 FR 1583 (February 24, 1960), and 10450, 18 FR 2489 (April 27, 1954).

§ 10.2 Scope.

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) Licensees of the NRC and their employees (including consultants) and applicants for employment;

(c) NRC employees (including consultants) and applicants for employment; and

(d) Any other person designated by the Executive Director for Operations of the Nuclear Regulatory Commission.

§ 10.3 [Reserved]

§ 10.4 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its responsibility for the security of the nuclear energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and/or employment clearance and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization and/or employment clearance.

§ 10.5 Definitions.

As used in this part:

(a) *Access authorization* means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with the NRC, NRC contractors, agents, licensees of the NRC, or other person designated by the Executive Director for Operations, is eligible for a security clearance for access to Restricted Data or national security information.

(b) *Hearing Examiner* means a qualified attorney appointed by the Director, Office of Administration, to conduct a hearing in accordance with this part.

(c) *Hearing Counsel* means an NRC attorney assigned by the General Counsel to prepare and administer hearings in accordance with this part.

(d) *Personnel Security Review Examiners* are persons designated by the Executive Director for Operations to conduct a review of the record in accordance with this part.

(e) *Commission* means the Nuclear Regulatory Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, or its designee.

(f) *Employment Clearance* means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Executive Director for Operations of the NRC is eligible for employment or continued employment pursuant to subsection 145 b. of the Atomic Energy Act of 1954, as amended.

(g) *Eligible* or *Eligibility* means both initial eligibility and continued eligibility of an individual for access authorization and/or employment clearance.

(h) *National Security Information* means information that is owned by, produced for or by, or under the control of the United States Government, and that has been determined, pursuant to Executive Order 12356 or antecedent orders, to require protection against unauthorized disclosure, and is so designated.

(i) *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

Subpart B—Criteria for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance

§ 10.10 Application of the criteria.

(a) The decision as to access authorization and/or employment clearance is a comprehensive, common-sense judgment, made after consideration of all the information, favorable or unfavorable, relevant to whether the granting of access authorization and/or employment clearance would not endanger the common defense and security and would be clearly consistent with the national interest.